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*Attorneys for Defendants Aircast LLC,  
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and DJO, LLC*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANKL LIQUIDATING TRUST,

Plaintiff,

- against -

AIRCAST LLC, AIRCAST HOLDING  
COMPANY, LCC, and DJO, LLC,

Defendants.

07-CV-10624 (JGK)

## NOTICE OF MOTION

ECF Case

**PLEASE TAKE NOTICE** that, upon the annexed Declaration of Kenneth I. Schacter (the “Schacter Declaration”), dated April 4, 2008, the exhibits annexed thereto, the accompanying Memorandum of Law and all prior proceedings herein, the undersigned will move this Court before the Hon. John G. Koeltl, United States District Judge, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York, at such time as the Court hereafter determines, for an order pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the First through Fifth, Ninth and Tenth Claims for Relief herein on the grounds that (i) the claims fail to state a claim upon which relief may be granted; (ii) certain of such claims are subject to an enforceable arbitration agreement; and (iii)

the Third and Fourth Claims do not allege fraud with particularity as required by Rule 9(b); and granting such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that answering papers, if any, are due within 10 business days of service of these moving papers.

Dated: New York, New York  
April 4, 2008

**BINGHAM MCCUTCHEEN LLP**

By: s/ Kenneth I. Schacter

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